REPUBLIC OF KENYA

THE ENERGY SECTOR SOVEREIGN PROTECTION ACT

An Act to establish mandatory sovereign terms for all energy sector contracts; to create the Kenya Energy Contracts Authority; to vest generation assets in the people of Kenya at end of contract; to establish the Kenya Energy Tribunal as the exclusive forum for energy contract disputes; and for connected purposes.

THE DOCTRINE

We do not renegotiate.

We change the ground the contracts land on.

Draft for Legislative Consideration · 2026

PREAMBLE

WHEREAS the energy resources of Kenya belong to the people of Kenya;

WHEREAS the generation of electricity upon Kenyan soil, the transmission of power across Kenyan territory, and the distribution of energy to Kenyan households and industries are sovereign activities of the Republic;

WHEREAS the Republic has suffered material harm through energy procurement contracts structured to exploit information asymmetry, to route disputes to foreign forums, to extract capacity payments for power not delivered, and to vest permanent infrastructure in foreign private ownership;

WHEREAS existing contracts shall be honoured and no rights vested thereunder shall be disturbed by this Act;

WHEREAS this Act operates prospectively, changing the legal ground upon which all future energy contracts are made, so that the extraction architecture that has operated under past contracts finds no foothold in any future instrument;

BE IT ENACTED by the Parliament of Kenya as follows:

The design principle of this Act: substrate removal.

The sophisticated extraction mechanisms that have operated in Kenya's energy sector attach to three substrates: information asymmetry between state negotiators and private developers; institutional weakness that makes the state unable to say no credibly; and legal terrain that routes disputes away from Kenyan jurisdiction.

This Act removes all three substrates for every contract entered into after its commencement. Existing contracts are not disturbed. The stroke lands on the future, not the past.

PART I — PRELIMINARY

Section 1 — Short Title and Commencement

(1) This Act may be cited as the Energy Sector Sovereign Protection Act, 2026.

(2) This Act shall come into force on the date of assent.

(3) This Act applies to all energy contracts entered into after the date of commencement. It does not disturb, modify, or retrospectively affect any contract entered into before that date.

(4) Subsection (3) is a fundamental provision of this Act. No court, tribunal, or arbitral body shall interpret any provision of this Act as operating retrospectively on contracts executed before commencement.

Section 2 — Interpretation

In this Act, unless the context otherwise requires—

- "energy contract" means any power purchase agreement, generation licence, transmission agreement, distribution concession, fuel supply agreement, or any other contract under which a private party undertakes to generate, transmit, distribute, or supply energy within Kenya or to sell energy to a Kenyan offtake authority, with a value exceeding five hundred million shillings or a term exceeding five years;
- "the Authority" means the Kenya Energy Contracts Authority established under Section 5;
- "the Tribunal" means the Kenya Energy Tribunal established under Section 18;
- "sovereign terms" means the mandatory contractual provisions prescribed under Part II of this Act;
- "generation asset" means any plant, equipment, infrastructure, or facility used in the generation of electricity, including the land upon which it stands where that land is owned or leased from the state;
- "capacity payment" means any payment made to a generator in respect of installed or available generation capacity, regardless of whether that capacity is dispatched;
- "offtake authority" means Kenya Power and Lighting Company, its successor, or any state entity authorised to purchase power in bulk;
- "change order" means any variation, amendment, addition, or modification to the scope, cost, or timeline of an energy contract after execution;
- "the Model Contract" means the standard form energy contract published by the Authority under Section 8;
- "reversion" means the transfer of a generation asset to the state at no cost upon expiry or termination of the relevant energy contract.

Section 3 — Objects of this Act

The objects of this Act are—

1. to ensure that all energy contracts entered into after commencement contain mandatory sovereign terms protecting Kenya's fiscal, legal, and technical interests;
2. to establish a Kenya Energy Contracts Authority with the technical capacity and institutional independence to negotiate and approve energy contracts on behalf of the state;
3. to vest generation assets in the people of Kenya upon expiry or termination of every energy contract;
4. to establish the Kenya Energy Tribunal as the exclusive forum for the resolution of energy contract disputes, ending the routing of such disputes to foreign arbitral forums;
5. to close the information asymmetry between the state and private energy developers through mandatory disclosure, independent review, and published contract terms; and
6. to do all of the foregoing prospectively, without disturbing existing contracts, by changing the legal ground upon which all future energy contracts are made.

PART II — SOVEREIGN TERMS

> This Part is the engine of the Act. The sovereign terms are mandatory. They cannot be waived, modified, or contracted out of by any party. A provision in any energy contract that contradicts a sovereign term is void to the extent of the contradiction — the rest of the contract stands.
>
> Every developer who enters the Kenyan energy market after commencement does so knowing the ground they are building on. The terms are not negotiated. They are the floor.

Section 4 — Mandatory Sovereign Terms

(1) Every energy contract entered into after the commencement of this Act shall contain the sovereign terms set out in this Section. These terms are mandatory and non-waivable.

(2) Any provision of an energy contract that is inconsistent with a sovereign term is void to the extent of the inconsistency. The remainder of the contract continues in force.

(3) The sovereign terms are—

(A) GOVERNING LAW

Every energy contract shall be governed by the laws of Kenya. No energy contract shall specify any other governing law. A governing law clause specifying any law other than Kenyan law is void and Kenyan law applies.

(B) DISPUTE RESOLUTION — EXCLUSIVE TRIBUNAL JURISDICTION

(1) All disputes arising out of or in connection with an energy contract shall be resolved exclusively by the Kenya Energy Tribunal established under Part IV of this Act.

(2) No energy contract shall contain an arbitration clause, a foreign court jurisdiction clause, or any provision routing disputes to any forum other than the Kenya Energy Tribunal.

(3) Any arbitration clause, foreign court clause, or equivalent provision in an energy contract is void. No Kenyan court shall enforce a foreign arbitral award arising from a dispute that falls within the Tribunal's exclusive jurisdiction under this Act.

(4) For the avoidance of doubt: an energy developer who enters a contract governed by this Act has irrevocably submitted to the exclusive jurisdiction of the Kenya Energy Tribunal for all disputes arising under that contract.

(C) REVERSION OF GENERATION ASSETS

(1) Upon expiry or termination of an energy contract for any reason, all generation assets used in the performance of that contract shall revert to the Republic of Kenya at no cost.

(2) Reversion shall be automatic and shall not require any further act, payment, or agreement by the state.

(3) The developer shall maintain all generation assets in good operational condition throughout the term of the contract and shall deliver them in that condition upon reversion. Failure to maintain assets constitutes a breach of contract and gives rise to a damages claim by the state in the Tribunal.

(4) The value of assets to be constructed by the developer shall be disclosed in full in the contract. The schedule of assets subject to reversion shall be attached as a mandatory schedule to every energy contract.

(5) No energy contract shall contain a provision requiring the state to purchase the developer's equity stake, buy out its shareholders, or compensate it in any form for the reversion of assets at end of contract.

(D) CAPACITY PAYMENT CAP

(1) Capacity payments shall not exceed the cap prescribed by the Authority by regulation, expressed as a percentage of the agreed per-unit generation tariff, and reviewed annually.

(2) Capacity payments shall not be payable in respect of capacity that is unavailable due to the developer's own fault, including planned maintenance not approved by the offtake authority.

(3) The aggregate capacity payments payable under all energy contracts in any financial year shall not exceed fifteen percent of the total electricity generation budget of the offtake authority without the written approval of the National Assembly.

(4) A capacity payment provision in an energy contract that exceeds the cap prescribed under subsection (1) is void to the extent of the excess. The capped rate applies.

(E) CHANGE ORDER RESTRICTIONS

(1) No change order that increases the total contract value by more than ten percent of the original contract value shall be valid without—

(a) the written approval of the Authority;

(b) an independent technical and financial review of the proposed change order; and

(c) publication of the change order, the independent review, and the Authority's approval on the Authority's public digital platform within forty-eight hours of execution.

(2) The cumulative value of change orders under any single energy contract shall not exceed twenty percent of the original contract value. A change order that would cause the cumulative total to exceed this limit is void unless approved by the National Assembly by resolution.

(3) Any change order that alters the governing law, dispute resolution, reversion, or capacity payment provisions of an energy contract is void regardless of its value.

(F) CURRENCY AND EXCHANGE RATE PROVISIONS

(1) Energy contracts shall not contain provisions transferring exchange rate risk entirely to the offtake authority or the state.

(2) Exchange rate risk shall be shared between the developer and the offtake authority according to the formula prescribed by the Authority, which shall reflect a fair allocation based on the relative ability of each party to hedge currency exposure.

(3) A currency provision that transfers more than fifty percent of exchange rate risk to the offtake authority or the state is void. The Authority's prescribed formula applies.

(G) TARIFF TRANSPARENCY AND REVIEW

(1) The full tariff structure of every energy contract, including all component costs, shall be published by the Authority on its public digital platform within forty-eight hours of contract execution.

(2) Every energy contract of ten years or more shall contain a tariff review mechanism exercisable at five-year intervals, allowing either party to request a review by the Tribunal against a benchmark of comparable regional tariffs.

(3) No energy contract shall contain a stabilisation clause preventing the application of future Kenyan legislation to the contract.

(H) TECHNOLOGY TRANSFER

(1) Every energy contract with a term of fifteen years or more shall include a technology transfer obligation under which the developer commits to—

(d) training Kenyan engineers and technicians to operate and maintain the relevant generation technology;

(e) employing Kenyan nationals in not fewer than seventy percent of operational and technical roles within five years of commissioning; and

(f) sharing all operational manuals, technical specifications, and maintenance protocols with the Authority within six months of commissioning.

(2) A developer may not close a contract, surrender a licence, or exit an energy project until the Authority certifies that the technology transfer obligation has been substantially met.

PART III — THE KENYA ENERGY CONTRACTS AUTHORITY

The Authority is the institutional substrate removal. It exists so that the state is never again outgunned technically or legally at the negotiating table.

It is not a regulator. EPRA regulates. The Authority negotiates, approves, and monitors — with the technical depth and institutional independence to do so without capture.

Section 5 — Establishment

(1) There is hereby established a body to be known as the Kenya Energy Contracts Authority.

(2) The Authority is a permanent institution of the Republic. It shall not be subject to executive reorganisation, ministerial merger, or dissolution except by Act of Parliament.

(3) The Authority shall be a body corporate with perpetual succession, a common seal, and capacity to sue and be sued in its own name.

Section 6 — Mandate

The mandate of the Authority is—

7. to negotiate all energy contracts on behalf of the state, as sole authorised negotiating body;

8. to review and approve all energy contracts before execution, certifying compliance with the sovereign terms under Part II;
9. to publish all energy contracts, change orders, tariff structures, and independent reviews on its public digital platform within forty-eight hours of execution or approval;
10. to commission independent technical and financial review of every energy contract above two billion shillings before approval;
11. to maintain and update the Model Contract under Section 8;
12. to monitor compliance with energy contracts throughout their term and to bring enforcement proceedings in the Tribunal where a developer is in breach;
13. to build and maintain the technical capacity within the state to understand, negotiate, and manage energy contracts without dependence on external advisors employed by or conflicted with private developers; and
14. to publish an annual State of Kenya's Energy Contracts report assessing the financial and technical performance of every active energy contract.

Section 7 — Governance and Independence

(1) The Authority shall be led by a Director-General appointed by the President subject to confirmation by a two-thirds majority of all members of the National Assembly.

(2) The Director-General shall serve a single non-renewable term of six years and shall not be removed except upon a two-thirds resolution of the National Assembly or conviction of a criminal offence.

(3) The Director-General and all staff of the Authority shall be compensated at market rates benchmarked against the private energy sector, so that the Authority can recruit and retain the technical expertise required to perform its mandate without dependence on the developers it regulates.

(4) No person who has been employed by, consulted for, or held a financial interest in an energy developer within the preceding five years shall be appointed Director-General or serve in a senior technical or legal role in the Authority.

(5) No Director-General or senior Authority official shall accept employment with an energy developer within three years of leaving the Authority.

(6) The Authority's budget is a protected appropriation and shall not be reduced below the level of the preceding year's appropriation except by constitutional amendment.

Section 8 — The Model Contract

(1) The Authority shall publish and maintain a Model Contract for each category of energy contract — power purchase agreements, transmission agreements, distribution concessions, and fuel supply agreements.

(2) The Model Contract embeds all sovereign terms under Part II as non-negotiable provisions.

(3) Developers may negotiate commercial terms not governed by the sovereign terms — including generation tariff rates, construction timelines, performance guarantees, and force majeure definitions — within the framework of the Model Contract.

(4) Any energy contract that departs from the Model Contract must be accompanied by a deviation schedule identifying every departure and the Authority's written justification for each departure. No departure from a sovereign term is permissible.

(5) The Model Contract shall be published on the Authority's public digital platform and updated whenever the sovereign terms are amended.

Section 9 — No Contract Without Authority Approval

(1) No energy contract shall be executed by any state entity, offtake authority, county government, or state corporation without prior written approval of the Authority.

(2) An energy contract executed without Authority approval is void ab initio. No rights or obligations arise under it.

(3) A state officer who executes an energy contract without Authority approval commits an offence and is liable on conviction to imprisonment for not less than ten years and to personal liability for any financial loss suffered by the state under the void contract.

PART IV — THE KENYA ENERGY TRIBUNAL

> The Tribunal closes the legal terrain substrate. Foreign arbitration in London or Paris has consistently produced outcomes unfavourable to the Kenyan state — not because Kenyan law is weak, but because the forums were chosen by developers who understood them better.
>
> The Tribunal is not a domestic court that can be outgunned by expensive foreign counsel. It is a specialist institution with the depth to adjudicate complex energy disputes at the level the disputes require.

Section 10 — Establishment

(1) There is hereby established a tribunal to be known as the Kenya Energy Tribunal.

(2) The Tribunal has exclusive jurisdiction over all disputes arising out of energy contracts governed by this Act.

(3) No Kenyan court, save the Court of Appeal on a point of law, has jurisdiction over a dispute falling within the Tribunal's exclusive jurisdiction.

Section 11 — Composition

(1) The Tribunal shall comprise—

(g) a President, who shall be a judge of the High Court or superior court of equivalent standing, appointed by the Judicial Service Commission;

(h) not fewer than four and not more than eight technical members, being persons with recognised expertise in energy engineering, energy economics, or energy finance, appointed by the President of the Tribunal following open competitive selection; and

(i) not fewer than two and not more than four legal members, being advocates of the High Court of not fewer than fifteen years' standing with experience in commercial or energy law.

(2) All members of the Tribunal shall serve fixed terms of five years, renewable once.

Section 12 — Jurisdiction

The Tribunal has exclusive jurisdiction to—

15. hear and determine all contractual disputes between the state or an offtake authority and an energy developer arising under an energy contract governed by this Act;

16. determine whether a provision of an energy contract is consistent with the sovereign terms under Part II;

17. award damages, order specific performance, and make declaratory orders in respect of energy contracts;

18. hear and determine enforcement proceedings brought by the Authority under Section 6(6);

19. conduct tariff reviews under Section 4(g)(2); and

20. determine any question arising on the reversion of generation assets under Section 4(c).

Section 13 — Procedure and Finality

(1) The Tribunal shall determine disputes within one hundred and eighty days of filing. This timeline is mandatory and not subject to extension except in exceptional circumstances certified by the President of the Tribunal.

(2) The Tribunal's decisions on questions of fact are final. An appeal lies to the Court of Appeal on a point of law only.

(3) No foreign arbitral award arising from a dispute that falls within the Tribunal's exclusive jurisdiction shall be recognised or enforced by any Kenyan court.

(4) The Tribunal's proceedings shall be conducted in English or Kiswahili. A developer who claims inability to proceed in either language shall bear the full cost of translation.

PART V — ASSET REVERSION REGISTER

Section 14 — The National Energy Assets Register

(1) The Authority shall establish and maintain a National Energy Assets Register recording—

(j) every generation asset subject to reversion under this Act;

(k) the identity of the developer, the contract reference, and the reversion date;

(l) the asset valuation at the time of contract execution;

(m) the condition assessment of the asset conducted annually by the Authority; and

(n) the reversion record upon expiry or termination of the relevant contract.

(2) The Register shall be publicly accessible on the Authority's digital platform.

(3) No generation asset on the Register may be sold, transferred, encumbered, or disposed of by the developer without the Authority's written approval. An unauthorised transfer is void.

Section 15 — State Readiness Obligation

(1) The Authority shall, in respect of every generation asset due to revert within three years, prepare and publish a State Readiness Plan ensuring that—

(o) Kenyan technical personnel are trained and certified to operate the asset immediately upon reversion;

(p) the offtake authority has budgeted for operational costs following reversion; and

(q) a management structure is in place to operate the asset on the day of reversion.

(2) This section reflects the principle that reversion without readiness is not sovereignty. The stroke of reversion only lands cleanly when the state is prepared to receive what reverts to it.

PART VI — TRANSPARENCY AND ENFORCEMENT

Section 16 — Mandatory Publication

The Authority shall publish on its public digital platform within forty-eight hours of execution or approval—

21. every energy contract entered into after commencement of this Act, in full, without redaction;
22. every change order approved under Section 4(e);
23. every independent review commissioned under Section 6(4);
24. every deviation schedule under Section 8(4);
25. every Authority approval or rejection of a proposed contract; and
26. the annual State of Kenya's Energy Contracts report under Section 6(8).

Section 17 — Offences

(1) A person who—

(r) executes an energy contract without Authority approval contrary to Section 9;

(s) causes or permits a change order to be executed in violation of Section 4(e);

(t) includes in an energy contract a provision that purports to waive or modify a sovereign term;

(u) obstructs the Authority in the performance of its functions; or

(v) fails to maintain generation assets in the condition required for reversion under Section 4(c)(3),

commits an offence and is liable on conviction to imprisonment for not less than ten years.

(2) A corporate entity that commits an offence under this section is liable to a fine not exceeding ten percent of the total value of the relevant energy contract.

(3) Conviction under this section shall result in permanent debarment from participation in any Kenyan energy contract, public procurement, or state concession.

Section 18 — Whistleblower Protection

(1) A person who in good faith discloses information to the Authority, the Ethics and Anti-Corruption Commission, or the Director of Public Prosecutions regarding a suspected violation of this Act shall not be subject to any civil or criminal liability for that disclosure.

(2) No employer shall dismiss, demote, harass, or otherwise disadvantage an employee for making a disclosure under subsection (1). Such action constitutes a criminal offence carrying imprisonment of not less than three years.

(3) The Authority shall establish and maintain a secure, anonymous digital channel for the receipt of disclosures under this section.

PART VII — GENERAL PROVISIONS

Section 19 — Relationship with Existing Law

(1) This Act shall be read together with the Energy Act, the Public Procurement and Asset Disposal Act, and the Competition Act.

(2) Where this Act is inconsistent with any other written law in respect of an energy contract governed by this Act, this Act prevails.

(3) Nothing in this Act affects the regulatory functions of the Energy and Petroleum Regulatory Authority in respect of licensing, tariff setting, and technical standards.

Section 20 — The Prospective Principle

(1) This section is a constitutional provision of this Act and may not be amended except by a two-thirds majority of the National Assembly and the Senate sitting jointly.

(2) This Act does not disturb, vary, rescind, or retrospectively affect any energy contract entered into before the date of commencement.

(3) The sovereign terms under Part II apply only to energy contracts executed after the date of commencement.

(4) The reversion provisions under Section 4(c) and Part V apply only to generation assets constructed or substantially refurbished after the date of commencement under contracts governed by this Act.

(5) Any interpretation of this Act that gives it retrospective effect on existing contracts is contrary to the legislative intent and is void.

THE DOCTRINE

We do not confront. We do not renegotiate.
We change the ground the contracts land on.

Existing contracts stand. Existing rights are honoured.
The next contract finds different terrain.
The substrate is gone.

Kenya's energy belongs to Kenya's people.

SCHEDULE 1 — MODEL POWER PURCHASE AGREEMENT

[To be published by the Authority within ninety days of commencement, embedding all sovereign terms under Part II as non-negotiable provisions.]

SCHEDULE 2 — CAPACITY PAYMENT CAP FORMULA

[To be prescribed by the Authority by regulation within ninety days of commencement, reviewed annually.]

SCHEDULE 3 — EXCHANGE RATE RISK SHARING FORMULA

[To be prescribed by the Authority by regulation within ninety days of commencement.]

SCHEDULE 4 — GENERATION ASSET CATEGORIES SUBJECT TO REVERSION

[To be published by the Authority within thirty days of commencement, classifying all generation asset types by reversion treatment.]